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No. 03-1680

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

DECOMA LOVE-LANE,

Petitioner,

v.

DONALD MARTIN, Individually,

Respondent.

On Conditional Cross Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

RESPONSE TO CONDITIONAL CROSS PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 1

1. Undisputed Facts Regarding Love-Lane's Conduct and the Reaction by Superintendent Martin and the Board. 1

2. The District Court's Grant of Summary Judgment 2

3. Affirmation by the Fourth Circuit 3

REASONS FOR DENYING THE WRIT 4

1. The Fourth Circuit's Opinion Is Not in Conflict with This Court's Precedents 4

2. The Fourth Circuit Did Not Error in Applying Rule 56 7

3. The Fourth Circuit's Opinion Does Not Conflict with Other Circuits 10

CONCLUSION 11

TABLE OF AUTHORITIES

Page

Cases

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986) 8

Board of County Commissioners of Bryan County v. Brown, 520 U.S. 397 (1997) .. 4, 5, 6, 7, 9, 10

Bordanaro v. McLeod, 871 F.2d 1151 (1st Cir. 1989) 10

Brown v. Bryan County, 219 F.3d 450 (5th Cir. 2000) 10

City of Canton v. Harris, 489 U.S. 378 (1989) 4, 5, 6, 7, 10

City of St. Louis v. Praprotnik, 485 U.S. 112 (1988) 6

Farmer v. Brennan, 511 U.S. 825 (1994) 6

Jeffes v. Barnes, 208 F.3d 49 (2nd Cir. 2000) 10

Kentucky v. Graham, 473 U.S. 159 (1985) 5

Cf. Mason v. Village of El Portal, 240 F.3d 1337 (11th Cir. 2001) 9

Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574 (1986) 7, 8

Reeves v. Sanderson Plumbing Prods., Inc., 520 U.S. 133 (2000) 8

Settlegoode v. Portland Public Sch., 362 F.3d 1118 (9th Cir. 2004) 10, 11

Constitutional Provisions, Statutes and Rules

28 U.S.C. § 1331 2

42 U.S.C. § 1983 2

SUP. CT. R. 10 4

SUP. CT. R. 56 ..... 4, 5, 7, 10

FED. R. CIV. P. 56(c) 7

FED. R. CIV. P. 56(e) 7

STATEMENT OF THE CASE

1. Undisputed Facts Regarding Love-Lane's Conduct and the Reaction by Superintendent Martin and the Board.

During Cross Petitioner Plaintiff DeComa Love-Lane's three-year tenure as Assistant Principal at Lewisville Elementary, she became entwined in clashes with several teachers, as well as her supervising Principal, Brenda Blanchfield ("Blanchfield"). These conflicts spanned numerous topics—from such insignificant administrative matters as where to stand during bus duty to issues like disciplinary practices which Love-Lane perceived to be racially discriminatory. J.A. 131, 740, 823, 858-59, 866-69, 955, 968-69, 1153, 1252. These conflicts escalated throughout Love-Lane's tenure at Lewisville Elementary and led to the involvement of two different Assistant Superintendents, as well as direct involvement by Superintendent Donald Martin. J.A. 165, 289, 968-69, 1002-03. Superintendent Martin received reports from his Assistant Superintendents regarding Love-Lane's disrespectful conduct toward her Principal and various faculty, and then Superintendent Martin observed her behavior first hand in meetings where she refused to follow even the most minor of her supervisor's instructions. J.A. 165, 289, 968-69, 1002-03. In a final effort to get Love-Lane and Blanchfield to work together, Martin prepared an October 28, 1997 memo in which he concluded the administration of the school had been adversely affected and outlined his expectations for both Love-Lane and Blanchfield for that school year. J.A. 166-67, 172-73, 471-75, 688-92, 741, 969, 976-80.

Even after Martin issued that memo, Love-Lane continued her disruptive behavior. J.A. 162-64, 185-88. Indeed, in January 1998, a group of fifth-grade teachers took concerns directly to Martin regarding Love-Lane's

communications and interactions with them. J.A. 725, 825-26, 957-58, 970-71, 1155-56. Similarly, Assistant Superintendent Bell reported continued difficulties with Love-Lane. J.A. 287-90, 970-71.

In the spring of 1998, Martin reorganized the administrative team at Lewisville, returning Love-Lane to a teacher position, J.A. 290, 297, 971-73, 986, and moving Blanchfield to an administrative position at the home office with a reduction in pay, J.A. 290, 735, 742-43, 971-72. In response to this, Love-Lane filed a formal grievance, which was heard by a three-member panel of the School Board. J.A. 160-61, 272-73, 303-04, 972, 990-96, 1024-25. The panel received documentation agreed upon as the relevant record in the matter by the School System's attorney and Love-Lane's attorney and also heard statements from Love-Lane's attorneys, from Love-Lane herself, and from Martin and Blanchfield. J.A. 273, 304, 1025. The panel affirmed Martin's decisions by a vote of two to one. J.A. 262-67, 273, 304, 972, 1025-26. Because the panel decision was not unanimous, Love-Lane had the opportunity to appeal the panel decision to the full Board and she did so. J.A. 273-74, 972, 1025-26. Having been provided with and considering the record of the panel hearing, the audiotape of the panel hearing, and legal arguments from Love-Lane's attorneys and from the School System's attorney, the Board voted to sustain the decision of the panel. J.A. 273-74, 314-15, 321-22, 324-25, 334-35, 338-39, 342-43, 972, 1025-26; Record, Exhibits 1 and 2 to December 13, 2000 Declaration of Douglas Punger.

2. The District Court's Grant of Summary Judgment.

Pursuant to its federal question jurisdiction, 28 U.S.C. § 1331, 42 U.S.C. § 1983, the district court considered the undisputed evidence in this case and granted summary judgment in favor of Defendants on all of Plaintiff's claims. Specifically with regard to her free speech retaliation claim

against Martin in his official capacity and against the Board, the district court explained that Love-Lane's speech regarding discriminatory discipline was intertwined with her personal difficulties in getting along with her Principal and was expressed in a context that "was more in her capacity as a public school administrator than as a private citizen." Pet. App. 84a. Therefore, the district court concluded that her speech was not on a matter of public concern. Pet. App. 84a. In addition, the district court pointed to "substantial evidence of the disruption and destruction of working relationships caused by Plaintiff's expression, some of it by Plaintiff's own admission," to conclude that "Defendants' interest in maintaining the effective functioning of Lewisville by removing Plaintiff, a disruptive and dividing influence, far outweighs Plaintiff's interest in First Amendment expression." Pet. App. 84a-85a.

In addition, the district court considered the potential liability of Martin in his official capacity for any constitutional claims. The district court concluded that claims against Martin in his official capacity were essentially claims against the Board and should be dismissed as redundant. Pet. App. 89a. With respect to the Board's liability for constitutional claims, the district court held that "Plaintiff has not established that any policy, custom, or final decision of the Board resulted in any constitutional violations she has alleged", and, therefore, granted summary judgment in the Board's favor. Pet. App. 89a.

3. Affirmation by the Fourth Circuit.

The Fourth Circuit panel affirmed the dismissal of the claims against Martin in his official capacity as redundant. Pet. App. 29a. Similarly, with respect to the Board, the Fourth Circuit "conclude[d] that Love-Lane has failed to demonstrate the necessary involvement on the part of the Board." Pet. App. 28a. Accordingly, the Fourth Circuit

affirmed the district court's grant of summary judgment in favor of the Board. Pet. App. 28a-29a.

REASONS FOR DENYING THE WRIT

This Court's rules state that "[a] petition for a writ of certiorari will be granted only for compelling reasons." SUP. CT. R. 10. Cross-Petitioner Plaintiff DeComa Love-Lane's Conditional Cross Petition for Writ of Certiorari does not provide compelling reasons for this Court to review the Fourth Circuit's decision affirming summary judgment in favor of Respondents Defendants Donald Martin (in his official capacity) and the Board. To the contrary, in her Cross Petition, Love-Lane expressly admits that that the Fourth Circuit "properly articulated the guiding standards under this Court's precedent", and merely asserts that "the Fourth Circuit overlooked evidence." Cross Pet. 15. Such allegations of error are identified as the very type that normally will not lead the Court to grant review: "A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." SUP. CT. R. 10. As described more fully below, this case does not present the rare circumstance where such review would be appropriate, and, therefore, the Cross-Petition should be denied.

1. The Fourth Circuit's Opinion Is Not in Conflict with This Court's Precedents.

Love-Lane asserts that the Fourth Circuit's decision "is in conflict with Rule 56 and this Court's precedent . . . in [*Board of County Commissioners of*] *Bryan County* [*v. Brown*] and [*City of Canton v.*] *Harris*."[1] Cross Pet. 20.

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[1]Neither Rule 56 nor the cases to which Love-Lane refers address the redundancy of official capacity claims. Thus, Respondents presume that Love-Lane does not seek

Neither the *Harris* nor the *Bryan County* case discusses Rule 56's standards for summary judgment. In addition, neither case provides guidance on municipal liability with which the Fourth Circuit's opinion could be said to conflict.

In *Harris*, the Court addressed whether a municipality could be held liable for the constitutional violation committed by its employee if the municipality failed to provide appropriate training to the employee. 489 U.S 378, 388 (1989). The Court held that inadequacy of "training may serve as the basis for §1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the [employee] come[s] into contact." *Id.* Similarly, in *Bryan County*, the Court considered whether a single deviation from normal hiring practices by the policy-making official was sufficient to impose liability for the constitutional violation committed by the employee who had been hired through the deviation in practice. 520 U.S. 397, 408 (1997). Specifically, the employee officer in *Harris* had been hired in spite of his record of having pleaded guilty to misdemeanors including assault and battery, resisting arrest, and public drunkenness. *Id.* at 401. As in *Harris*, the Court in *Bryan County* applied a "deliberate indifference" standard, explaining that, "unless

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review of the Fourth Circuit's dismissal of claims against Martin in his official capacity. To the extent Love-Lane seeks such review, the Cross Petition should be denied because the Fourth Circuit acted consistently with this Court's decision in *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985). In addition, although Martin in his individual capacity is identified as the respondent in the caption of the Cross Petition, none of the points in the Cross Petition seem to be directed at portions of the Fourth Circuit's opinion affecting Martin in his individual capacity, nor does the conclusion of the Cross Petition seek review with respect to Martin, individually. Accordingly, this Response does not address such matters.

in light of that record [the officer's] use of excessive force would have been a plainly obvious consequence of the hiring decision" no liability can attach. *Id.* at 415.

In contrast to the *Harris* and *Bryan County* cases, this case does not present a situation in which there is an attempt to hold the Board responsible for a constitutional violation committed by an employee of the Board. Rather, the Board itself retained the final power to decide whether or not to reassign Love-Lane to a teaching position and whether or not to renew her administrator contract. Thus, as stated by the Fourth Circuit, "This means that Love-Lane must demonstrate that the Board was aware of the constitutional violation and either participated in, or otherwise condoned, it." Pet. App. 28a. The focus here is on whether or not the Board engaged in a constitutional violation itself, not whether some other action by the Board—failure to train or deviation from hiring practices—led to a constitutional violation committed by one of its employees. *See City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988) (explaining that "when a subordinate's decision is subject to review by the municipality's authorized policymakers, they have retained the authority to measure the official's conduct for conformance with their policies" and it is for the decision resulting from such review that the municipality may be liable); *see also Farmer v. Brennan*, 511 U.S. 825, 840-41 (1994) (recognizing limits on applicability of *Harris*' deliberate indifference standard beyond the situation addressed in *Harris)*. Thus, the cases with which Love-Lane claims the Fourth Circuit's decision is inconsistent do not provide analogous situations upon which an inconsistency could be based.

Of course, the *Harris* and *Bryan County* cases do reiterate certain general, broadly-applicable principles of municipal liability, and with respect to those principles, the Fourth Circuit did act consistently. In particular, those cases warn that "[w]here a court fails to adhere to rigorous

requirements of culpability and causation, municipal liability collapses into respondeat superior liability. . . .[and] Congress did not intend municipalities to be held liable unless deliberate action attributable to the municipality directly caused a deprivation of federal rights." *Bryan County* 520 U.S. at 415; *accord Harris*, 489 U.S. at 385. The Fourth Circuit looked specifically at the actions attributable to the Board to determine if the evidence could support a conclusion that the Board deliberately caused a deprivation of Love-Lane's constitutional rights. Pet. App. 27a-28a. In performing such an analysis, the Fourth Circuit acted consistently with *Harris* and *Bryan County*.

2. The Fourth Circuit Did Not Error in Applying Rule 56.

The Fourth Circuit's holding—that the summary judgment evidence could not support a conclusion of deliberate deprivation of Love-Lane's constitutional rights by the Board—is consistent with applicable Rule 56 standards. Rule 56 states that "[t]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). When a summary judgment motion is made and properly supported, "an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him." FED. R. CIV. P. 56(e).

This Court has provided long-standing guidance on these Rule 56 standards. In *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, this Court explained that "the

issue of fact must be 'genuine'", something more than "some metaphysical doubt as to the material facts." 475 U.S. 574, 586 (1986). In *Anderson v. Liberty Lobby, Inc.*, this Court stressed that "this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." 477 U.S. 242, 247-48 (1986). The Court went on in *Anderson* to explain that "it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs [materiality]." *Id.* at 248. With respect to genuineness of the dispute, the Court explained that "[I]f the evidence is merely colorable or is not significantly probative, summary judgment may be granted." *Id.* at 249-50 (citations omitted).

Applying these guidelines to the summary judgment evidence, this Court has imposed a reasonableness requirement: "all justifiable inferences are to be drawn in [the non-movant's] favor." *Id.* at 255. A genuine issue of fact only exists if the factual issues "may reasonably be resolved in favor of either party." *Id.* at 250 (emphasis added). This determination must be made by reviewing the record as a whole. *Matsushita*, 475 U.S. at 587. "[T]he court should give credence to the evidence favoring the nonmovant as well as that 'evidence supporting the moving party that is uncontradicted and unimpeached . . . .'" *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 151 (2000).

In her Cross Petition, Love-Lane identifies three items from a 400-page grievance notebook that was prepared as background materials for the Board when it considered whether or not to approve the decision to move Love-Lane to a teacher position and to not renew her administrator contract. Cross Pet. 15-16. Love-Lane's grievance to the Board did not allege violation of her free speech rights.

Instead, it identified the following specific legal claims: "1. Defamation-(libel and slander) 2. Intentional Infliction of Emotion Distress 3. Racial Discrimination." J.A. 1019. In addition, Love-Lane was represented by two attorneys (both of whom spoke on her behalf at the Board panel hearing) who could have presented her free speech allegations directly to the Board. J.A. 278. This is the objective, undisputed, unimpeached evidence from which the Fourth Circuit determined that it would not be reasonable to infer that the Board knew that it was adopting a violation of Love-Lane's constitutional rights when it approved Love-Lane's reassignment and non-renewal of her administrator contract. Pet. App. 28A. The fact that the record before the Board included a few documents reflecting Love-Lane's allegedly protected speech and/or that one Board member admittedly knew that Love-Lane had engaged in such speech does not equate to a reasonable inference that the Board knew it was adopting a violation of Love-Lane's constitutional rights. *Cf. Mason v. Village of El Portal*, 240 F. 3d 1337, 1340 (11th Cir. 2001) (explaining that "there can be no municipal liability unless all three members of the Council who voted against reappointing Plaintiff shared the illegal motives"). Indeed, as this Court explained in *Bryan County*, the relevant inquiry is not knowledge of an underlying fact (in this case the fact of allegedly protected speech, in *Bryan County* the fact of prior convictions in a background check). Rather, the relevant inquiry is knowledge of an actual constitutional violation, or, as described in *Bryan County* "a plainly obvious consequence" of the underlying fact was a constitutional violation. *Bryan County*, 520 U.S. at 415. No such plainly obvious consequence could have been inferred here. There were over 400 pages of documentary evidence of reasons unrelated to the allegedly protected speech to justify the reassignment and non-renewal. This was coupled with the declarations of each Board member regarding his/her decision on the matter. Love-Lane seeks to have inferences drawn in her favor that simply are not reasonable from the

undisputed evidence presented, and the Fourth Circuit's refusal to draw such unjustified inferences is inconsistent with this Court's guidance on Rule 56 standards.

3. The Fourth Circuit's Opinion Does Not Conflict with Other Circuits.

Love-Lane claims that the Fourth Circuit's refusal to draw such unjustified inferences in her favor is inconsistent with the precedents of other circuits. To support this allegation, she cites four cases: *Settlegoode v. Portland Public Sch.*, 362 F.3d 1118 (9th Cir. 2004); *Brown v. Bryan County*, 219 F.3d 450 (5th Cir. 2000); *Jeffes v. Barnes*, 208 F.3d 49 (2nd Cir. 2000); *Bordanaro v. McLeod*, 871 F.2d 1151 (1st Cir. 1989). *Brown*, *Jeffes*, and *Bordanaro* are all cases, like *Harris* and *Bryan County*, that provide little guidance in this matter because liability was sought be imposed for the constitutional violation of an employee due to the municipalities'/public official's failure to train the employee. There are no such allegations here, and, therefore, these cases do not support an assertion of a circuit conflict.

Moreover, when the courts in those cases drew inferences in the plaintiffs' favor regarding the policy makers' constructive knowledge of the employees' constitutional violations, the inferences were based on evidence showing the unconstitutional behavior to be "so widespread or flagrant that in the proper exercise of their official responsibilities the municipal policymakers should have known of them." *Bordanaro*, 871 F.2d at 1157; *accord Brown*, 219 F.3d at 458 (describing evidence of actual awareness of "youth, inexperience, personal background, and ongoing arrest activities . . . along with the highly predictable risk of injury from the improper use of force by an untrained officer" as providing sufficient notice of the need to train); *Jeffes*, 208 F.3d at (pointing to evidence of direct encouragement of the retaliatory actions

and to the "widespread and conspicuous" nature of the underlying constitutional violations to infer knowledge of them). No evidence of widespread, flagrant constitutional violations exists here. Thus, the types of inferences drawn in those cases, would not be appropriate here.

With respect to the *Settlegoode* case (which was amended and superseded by 371 F.3d 503 (9th Cir. 2004)), the court specifically declined to hold the school board liable because there was no proof of ratification or a pattern and practice. 371 F.3d at 516 n.11. Thus, it, too, provides little guidance for the issues here, and does not present a circuit conflict.

CONCLUSION

For the reasons identified, Love-Lane's Conditional Cross Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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